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Before the
FEDERAL COMMUNICATIONS COMMISSION Federal Communications Commission
Washington, D.C. 20554 Office of Secretary

In the Matter of)
)
Policies and Rules Pertaining to) RM - 9085
Local Exchange Carrier) CCB/CPD 97-19
"Freezes" on Consumer Choices of)
Primary Local Exchange or)
Interexchange Carriers)

COMMENTS OF BELL ATLANTIC AND NYNEX

The Commission should reject MCI's attempt to hamstring local exchange carrier ("LEC") efforts to protect consumers from unauthorized PIC changes. There is no need to adopt redundant or vague regulations that could limit consumers' abilities to obtain a PIC freeze.¹ Instead, the Commission should focus its efforts on enforcing its anti-slamming rules.

NYNEX's² and Bell Atlantic's³ PIC freeze practices were developed in response to increasing complaints from end users about "slamming" -- the change of a customer's

¹ These comments primarily respond to MCI's efforts to have the Commission impose rules on limiting PIC freezes for selection of long-distance (interLATA) carriers. The Commission has no jurisdiction to regulate PIC freezes or other LEC practices regarding intrastate services, such as switching of intraLATA toll or local exchange carriers. Such matters are reserved to the States under Section 2(b) of the Act.

² The NYNEX Telephone Companies ("NYNEX") are New England Telephone and Telegraph Company and New York Telephone Company.

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primary interexchange carrier (PIC) without the customer's knowledge or consent.

Indeed, prior to PIC freeze, some payphone customers were being slammed multiple times in a single day. Slamming deprives customers of their right to obtain service from their chosen long-distance carrier and distorts the long-distance marketplace by rewarding companies that engage in deceptive and misleading marketing practices. Over the last several years slamming has generated more complaints at the Commission than any other common carrier practice.⁴

Both the Commission and the industry have taken steps to curb slamming. The Commission has initiated numerous enforcement actions against offenders and has adopted rules to curb abuses. Local exchange carriers such as NYNEX and Bell Atlantic have offered customers the ability to freeze the PIC selection on their line. A customer can call up a Bell Atlantic or NYNEX business office and request that his PIC not be changed unless the customer expressly consents to the change. While the freeze is in effect, a PIC change submitted by an interexchange carrier for the customer will not be processed. However, the customer can still change his or her PIC at any time by simply calling the telephone company's business office.

³ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

⁴ See Common Carrier Scorecard, Common Carrier Bureau, Enforcement and Industry Analysis Divisions (Fall 1996).

It is not surprising that MCI -- a company that a few years ago was embroiled in a lawsuit with AT&T⁵ and more recently has been the object of an enforcement action by the Commission for willful and repeated slamming⁶ - seeks to restrict consumers' ability to obtain a PIC freeze.⁷ However, the Commission has expressly encouraged LECs to use PIC freezes as a way to help reduce slamming.⁸ Given the large number of slamming complaints that the Commission continues to receive, limiting the use of PIC freezes would send the wrong message to consumers and the industry, and would be contrary to the letter, spirit and primary goal of the Commission's 1985 Ballot and Allocation Order,⁹ its 1992 PIC Change Order¹⁰ and its rules.¹¹

MCI admittedly does not seek to outlaw PIC freezes altogether. Indeed, MCI customers also avail themselves of PIC freeze protection. Instead, MCI claims that it wants to ensure that LECs do not market PIC freezes in a deceptive manner. However, MCI's proposed regulations are overly restrictive, vague, and/or redundant of existing restrictions. To the extent real misrepresentations by LECs are occurring, the complaint

⁵ The lawsuit culminated in a settlement that became the basis for a Commission rulemaking proceeding regarding PIC changes. See Notice of Proposed Rulemaking, 6 FCC Rcd 1689 (1991).

⁶ See Notice of Apparent Liability for Forfeiture, DA 96-44 (January 23, 1996). The matter was settled by a Consent Decree between the parties. See MCI Telecommunications Corporation, DA 96-1010 (June 21, 1996).

⁷ For example, in 1996, NYNEX and Bell Atlantic received at least 13,000 complaints from consumers who claimed that they were slammed by MCI.

⁸ See Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560, 9574 n. 58 (1995). The Commission noted that some states encourage LECs to solicit PIC freezes before slamming occurs.

⁹ See Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985), recon. denied, 102 FCC 2d 503 (1985).

¹⁰ See Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992).

process is the answer, not broad and inflexible rules that will result in less protection for consumers who seek protection from slamming.

For example, MCI's proposed rule (Section 64.1200(a)) would prohibit carriers from employing PIC freeze or other carrier restrictions that have the purpose or effect of impeding competition or restricting consumer choice. In fact, because consumers have complete freedom to have a PIC freeze put on or taken off, a PIC freeze is a safeguard that increases consumer choice. Similarly, another proposed rule (Section 64.1200(3)(4)) would require carriers to "co-operate . . . in any reasonable manner" to remove PIC freezes, including three-way conference calls. Once again, this type of vague rule can only lead to endless disputes between carriers with different views on what is reasonable. It would allow long distance carriers like MCI to interject themselves into individual consumer's PIC freeze decisions. To the extent carriers would use such a rule to pressure individual consumers or otherwise expand the methods by which PIC freezes could be removed without the customer's consent, such a rule would serve as a vehicle to take choice away from individual customers.

MCI also proposes that the Commission prohibit carriers from acquiring PIC freezes through consumer solicitations that are deceptive or misleading. The Commission, however, already has ample authority to prevent such conduct from occurring,¹² and LECs are subject to other laws that regulate advertising and trade practices.¹³

¹¹ See 47 CFR § 64.1100 *et seq.*

¹² For example, Section 201(b) of the Act gives the Commission the authority to regulate all practices that relate to common carrier services including marketing practices. This section

MCI also asks that LECs provide carriers with lists containing the name and telephone number of all consumers who have a PIC freeze in effect. It is not clear why MCI needs this information. If MCI wants this information for the purpose of marketing these customers, it would be in clear violation of the Commission's Billing Name and Address (BNA) disclosure rules,¹⁴ which were recently upheld by the D.C. Circuit Court of Appeals.¹⁵ In any event, LECs like Bell Atlantic and NYNEX already make this information available for legitimate purposes.¹⁶

The bottom line here is clear. MCI's proposal claims to remedy a problem that in fact does not exist. Regardless, there is certainly no need for MCI's proposed vague rules that could limit the use of PIC freezes. What the Commission needs to do is to continue

of the Act was relied on by the Commission in its November 3, 1992 letter of admonishment to AT&T regarding its credit card marketing practices.

¹³ See, e.g., 15 U.S.C. §§ 45, 52-55.

¹⁴ 47 CFR § 64.1201.

¹⁵ AT&T v. FCC, D.C. Cir. Case No. 96-1147 (rel. May 16, 1997). The Court rejected AT&T's and MCI's efforts to use the information in the marketing of their own long-distance services.

¹⁶ Bell Atlantic and NYNEX provide this information in connection with their BNA services.

its policy of penalizing carriers that engage in slamming. The Commission should therefore deny MCI's Petition for Rulemaking.

Respectfully submitted,

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